IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

::JUDGMENT::

NASIMUDDIN AND ORS. VS. THE STATE OF RAJ. AND ORS.

D.B.CIVIL SPECIAL APPEAL (W) NO.957 OF 2006 UNDER SECTION 18 OF THE RAJASTHAN HIGH COURT ORDINANCE, 1949 AGAINST THE JUDGMENT 17.10.2005 PASSED IN SBCWP NO.19/1990

DATED OF JUDGMENT :: 4.1.2007

PRESENT

HON'BLE MRS.GYAN SUDHA MISRA,J.
HON'BLE MR.K.C.SHARMA,J.

Mr. Bhanu Pareek for the appellant.

By the Court:

1. This appeal has been preferred against the order of the learned Single Judge who has been pleased to uphold the order dated September 21, 1988 passed by the Khudkast Commissioner, Rajasthan, whereby the allotment of land measuring 32 bighas 17 biswas situated in village Ekar Dunger Tehsil Amer District Jaipur and 23 bighas 12 biswas in village Kukas, Tehsil Amer, District Jaipur made by the Collector in favour of the petitioner/appellant herein on July 14, 1986, was set aside holding therein that the Collector (Jagir) had no right to make the allotment in favour of the appellant who had claimed the land as his *khud kast* land under Section 21 of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (for short 'Jagir Act of 1952').

2. The appellant has assailed the order on the ground that he could not have been disallowed to retain the land merely for the reason that he had not filed the application against the order of the Khudkast Commissioner within time.

3. To appreciate the controversy, the factual history of the matter is referred to herein as follows:-

> Hakim Salimuddin Khan, father of the appellants herein and husband of Mst. Malka Jamani Begum, the writ petitioner, who expired during pendency of the writ petition, was the Jagirdar of village Ajabpura, Tehsil Lalsot, District Jaipur and village Azizpura, Tehsil Todabhim, District Sawai Madhopur. Under Section 21 of the **Rajasthan Land Reforms and Resumption of Jagirs Act, 1952** whole of the Jagir area of Hakim Salimuddin Khan was resumed. Hakim Salimuddin Khan applied for allotment of Khudkast land to the Collector (Jagir), Jaipur under Section 14 of the Jagirs Act on the plea that he had no Khudkasht land in his or in his family members' possession vide undated application (Annexure-A). It seems that pending consideration of the application, Hakim Salimuddin Khan expired and the Collector

(Jagir), Jaipur invoking the powers vested in him by virtue of Section 14 of the Jagirs Act vide his order dated 14.7.1986 allotted agricultural land in favour of Malka Jamani Begum in village Akada Dunger Tehsil Amer and in village Kukas, Tehsil Amer measuring total 56 Bighas and 4 Biswas of land.

4. On 6.8.1986, respondents 4 to 9 challenged the allotment order dated 14.7.1986 by filing appeal under Section 39 of the Jagirs Act before the Khudasht Commissioner. On the basis of the material placed on record by both the sides, the Commissioner Khudkasht arrived at a conclusion that the land allotted to Malka Jamani Begum falls within the JDA territory and, therefore, the order of the Collector (Jagir) under appeal was a nullity and consequently, the order of the Collector (Jagir) was set aside by the Khudkasht Commissioner vide his order dated 21.9.1988.

5. Smt. Malka Jamani Begum -the appellants' predecessor had challenged the order of the Khudkasht Commissioner in the writ petition but the learned Single Judge considering the provisions of Section 14 of the Jagirs Act was of the view that the application filed under Section 14 (1) of the Jagirs Act by Hakim Salimuddin Khan did not bear any date and petitioner Malka Jamani

Begum herself never moved an application under Section 14 of the Jagirs Act and, therefore, the allotment made in the name of malka Jamani Begum on an undated application of her husband, who expired in the year 1967 itself was against the mandate of Section 14 of the Jagirs Act.

6. Having heard the counsel for the appellant, we are of the view that besides the ground of limitation the position also remains that although the Collector (Jagir), Jaipur may be having the legal authority to make the allotment of Khudkasht land in favour of the person whose Jagir was resumed, the same could not have been done without ascertaining as to whether the land were the Khudkasht land of the appellants predecessor or that they were not in excess of the area which is the prescribed limit under Section 14 of the Jagirs Act. It was therefore, open for him to challenge the order of Khudkasht Commissioner by filing a revenue suit where he could have established that the Collector had the legal authority to make the allotment of Khudkast land in his favour under the Jagir Act, 1952 after establishing also the fact that the land in question were the Khudkast land of the predecessor of the petitioner/appellant due to which the same could be allotted in their favour by the

Collector. If such a suit had been filed the appellants would have been in a position to adduce evidence regarding the nature and character of the land as also their assertion that the land in question was in fact the Khudkast land of the appellants' predecessor so that the Collector could assume the power and jurisdiction to allot the land. What we wish to emphasize is that before an order of allotment of 32 bighas and 17 biswas and further 23 bighas 12 biswas land could be allotted in favour of the appellant, it should first of all have been examined as to whether those land at all were 'Khudkast' in nature so that the Collector could make the allotment in favour of the petitioners/appellants' predecessor. The appellant in our view had approached the wrong forum by filing a writ petition before the learned Single Judge challenging the order of the Khudkast Commissioner Rajasthan as the only appropriate remedy was to file a revenue suit where the nature and character of the disputed land that it was 'Khudkast' in nature could have been examined by proper appreciation of evidence in case it was adduced.

7. In addition Section 14 of the Jagirs Act mandates that the Jagirdar ought to have applied to the Collector for allotment of Khudkast land in his favour

prior to August 31, 1958 or within three months of the date of resumption of his Jagir whichever is later. Section 14 of the Jagirs Act is quoted hereinafter for facility of reference which is as follows:

> "14 **Application for allotment of Khudkasht:-** A Jagirdar who on the 1st day of July, 1954, does not hold any khudkasht or who on such date holds khudkasht less in area than the maximum area specified in section 18 may not later than the thirty first day of August, 1958 or within three months of the date of resumption, whichever is later, apply to the Collector or to the Commissioner for Khudkasht land for allotment of Khudkasht.
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> (2) Every such application shall be in the prescribed form and shall be signed and verified in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908) for the signing and verification of plaints."

8. From perusal of the aforesaid provisions, it is clear that if the Jagirdar did not hold any khudkast land on July 1, 1954 or that the Khudkast hold by him was less than the maximum area specified in Section 18 of the Jagirs Act he should have applied for allotment of Khudkast land in his favour prior to August 31, 1958. From the documents annexed to the writ petition it could not be proved that the Jagirdar himself had applied to the Collector for allotment of land prior to 31st August 1958 or within three months from the date of resumption of the Jagir whichever is later. Therefore, the allotment made in the name of Malka Jamani Begum the predecessor of the appellant was against the manadate of Section 14 of the Act.

In view of the above discussion and for the reasons stated hereinabove, if the writ petition has not been entertained by the learned Single Judge refusing to uphold the order of allotment made by the Collector, we find no legal ground to entertain this appeal. The appeal therefore, stands dismissed at the admission stage itself.

(K.C.SHARMA)J. (GYAN SUDHA MISRA)J.

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